Lithuanian Free Market Institute
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COMPARING LABOUR CODES IN THE LIGHT OF DOING BUSINESS METHODOLOGY

SUMMARY

Lithuania's new Labour Code that was supposed to be flexible in balancing employee-employer interests is to take effect as of 1 July 2017. It was already approved by the previous government, but vetoed by the President. Therefore, its entry into force was postponed and so began the process of its improvement. The work was continued by the new government.

Drawing on the World Bank's Doing Business Methodology, the present analysis presents the envisaged change in the regulation of labour relations in Lithuania by comparing the provisions of the effective Labour Code[1] with the ones provided for in the new legislation[2].

To reflect the regulatory changes pending in Lithuania and present labour relations in other countries, the present analysis provides a comparison of the key provisions of labour legislation in 10 EU Member States (Baltic States, CEE countries and some of the original Member States)[3] based on the World Bank's report for 2017.

According to 33 indicators provided by the World Bank (hiring, working hours, redundancy rules and costs), after enforcing the new Labour Code, the strictness of labour regulation will generally remain the same. There will be no significant changes as regards the strictness of labour regulation as improvement towards flexibility is expected in merely 3 out of 33 indicators.

There is no change in the hiring indicators.

There will be a possibility to agree upon a six-day working week (with some reservations).

There are no changes in redundancy rules.
The major change is concerned with redundancy costs, because of shorter notice periods and lower redundancy costs.

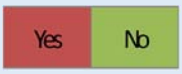
[1] The Labour Code of the Republic of Lithuania, 4 June 2002, IX-926.
[2] The Labour Code of the Republic of Lithuania, 14 September 2016, XII-2603.
[3] The Czech Republic, Hungary, Romania, Bulgarian and Poland (CEE) as Lithuania's competitors for investments. Germany and Belgium as highly productive Western European countries and Denmark for its *flexicurity* model.

		Lithuania*	Lithuania**	Latvia	Estonia	Poland	Czech Republic	Hungary	Romania	Bulgaria	Germany	Denmark	Belgium
		HIRING											
1	Fixed-term contracts prohibited for permanent tasks?	No	No	Yes	Yes	No	No	No	Yes	No	No	No	No
2	Maximum length of a single fixed-term contract (months).	60	60	60	60	33	36	60	36	36	No limit	No limit	No limit
3	Maximum length of fixed-term contracts (months).	60	60	60	120	33	108	60	60	36	No limit	No limit	No limit
		WORKING HOURS											
4	Standard workday.	8	8	8	8	8	8	8	8	8	8	7,4	7,6
5	Maximum working days per week.	5,5	6,0	5,5	5,0	5,5	6,0	5,0	5,0	6,0	6,0	6,0	6,0
6	Premium for night work (% of hourly pay).	50	50	50	25	20	10	15	25	3	0	0	0
7	Premium for work on weekly rest day (% of hourly pay).	100	100	0	0	100	10	50	100	0	0	0	0
8	Premium for overtime work (% of hourly pay).	50	50	100	50	50	25	50	75	50	0	0	50
9	Restrictions on night work?	No	No	No	Yes	No	No	No	No	Yes	No	No	Yes
10	Restrictions on weekly holiday work?	No	No	No	No	No	No	No	No	Ne	No	No	Yes
11	Restrictions on overtime work?	No	No	No	No	No	No	No	No	Yes	No	No	No
12	Paid annual leave (average for workers with 1, 5 and 10 years of tenure, in working days).	20,7	20,7	20,0	24,0	22,0	20,0	21,3	20,0	20,0	24,0	25,0	20,0
		REDUNDANCY RULES											
13	Maximum length of probationary period (months).	3,0	3,0	3,0	4,0	3,0	3,0	3,0	3,0	6,0	6,0	3,0	0,0
14	Dismissal due to redundancy allowed by law?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
15	Third-party notification if one worker is dismissed?	Yes	Yes	No	No	No	No	No	No	No	Yes	No	No
16	Third-party approval if one worker is dismissed?	Yes	Yes	No	No	No	No	No	No	No	Ne	No	No
17	Third-party notification if nine workers are dismissed?	Yes	Yes	No	No	No	No	No	No	No	Yes	No	No
18	Third-party approval if nine workers are dismissed?	Yes	Yes	No	No	No	No	No	No	No	No	No	No
19	Retraining or reassignment?	Yes	Yes	Yes	Yes	Yes	No	No	No	No	Yes	No	No
20	Priority rules for redundancies?	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No	Yes	No	No
21	Priority rules for reemployment?	No	No	No	No	Yes	No	No	Yes	No	No	No	No
		REDUNDANCY COST											
22	Notice period for redundancy dismissal (average for workers with 1, 5 and 10 years of tenure, in salary weeks).	8,7	4,3	4,3	8,6	10,1	8,7	6,2	4,0	4,3	10,0	0,0	19,7
23	Severance pay for redundancy dismissal (average for workers with 1, 5 and 10 years of tenure, in salary weeks).	15,9	13,0	8,7	4,3	8,7	11,6	7,2	0,0	4,3	11,6	0,0	0,0

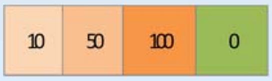
*June 2016 data by World Bank (Doing Business 2017. Equal Oppurtunity for All)

**LFMI evaluation of Labour Code (No.XII-2603) issued on 2016 September 14 (entry into force on 1 July 2017)

Chart indications:



green: no regulatory restrictions apply
red: regulatory restrictions apply



green: flexible conditions, moderate restrictions on mutual agreements or no centralised regulation
orange: the darker the orange, the stricter are the conditions and restrictions applicable to mutual agreements

Arrows indicate the envisaged regulatory changes in Lithuania

In evaluating business regulation in different global economies, the World Bank Group presents its yearly "Doing Business" report. The 2017 report[4] evaluates and compares business regulation as well as other indicators in 190 [5] world economies, ranking the countries from Afghanistan to Zimbabwe. One of the areas that is no longer being evaluated, although the data on it is publicly presented, is the regulation of labour relations.[6]

According to the World Bank, regulation is important for the effective functioning of the labour market and employee protection. The role of the government in this context is to find a healthy balance between flexible labour regulation and employee protection.[7]

"Doing Business" evaluates several aspects of labour regulation: hiring, working hours, redundancy rules and costs, and poses certain questions as regards job quality. It allows for a quantitative comparison of labour regulation and its strictness in different economies. The following analysis of the effective and new Labour Codes of the Republic of Lithuania will thus adhere to these World Bank indicators.

Hiring

In providing data on hiring processes, the World Bank covers questions about fixed-term contracts and their duration. They also stress the importance of whether fixed-term contracts for works of permanent nature allow for flexibility in meeting the demand for seasonal labour, temporary replacement of employees on maternity leave, as well as lowering the risk associated with innovative activities that do not guarantee a return on investments. Contracts of this kind also motivate the employment of persons with no work experience, especially the youth. [6]

No. 1

Fixed-term contracts are not prohibited for permanent tasks in Lithuania. The new Labour Code will not change this provision.

The majority of other EU countries (except for Latvia, Estonia and Romania) do not prohibit fixed-term contracts for permanent tasks as well.

No. 2,3

The current Labour Code stipulates that the maximum duration of a single fixed-term contract, including all renewals shall not exceed 60 months. The provision remains the same in the new Labour Code. Although there are certain small changes, they are not significant.[8]

[4] http://www.doingbusiness.org/reports/global-reports/doing-business-2017
[5] http://www.doingbusiness.org/Methodology/Methodology-Note
[6] In calculating its indices the World Bank evaluated and ranked the regulation of labour relations in different countries for only a few years in a row, i.e. 2012 and 2013. From 2014 the regulation of labour relations is not taken into account when evaluating the general business conditions.
[7] http://www.doingbusiness.org/~/media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB17-Report.pdf

[8] The new Labour Code regulates the length of fixed-term contracts: under Article 68(1), the maximum duration of a fixed-term employment contract, as well as the maximum total duration of consecutive contracts concluded with the same employee for the performance of the same work function, shall be two years. In addition, Article 67(4) of the new Labour Code allows for fixed-term employment contracts for work of a permanent nature that is currently prohibited under Article 109(2) of the effective Labour Code.

In some countries (e.g. Germany, Denmark and Belgium) no limits on duration apply to fixed-term contracts while in other the number vary from 33 months in Poland to 36 months in Bulgaria to 120 months in Estonia (including all renewals) to 108 months in Czech Republic (including all renewals).

As may be observed, the regulatory restrictions on fixed-term contracts in Lithuania will remain essentially the same under the new Labour Code.

Working hours

The World Bank also collects and presents data on working hours: the maximum number of working days allowed in a working week; premiums for night work, work on weekly holiday as well as various restrictions on night work, work on weekly holiday, overtime work, etc. and the duration of paid annual leave.

No. 4,5

Lithuania's regulation establishes a standard 8-hour working day and a maximum of 5.5 working days per week. The new Labour Code is about to change the situation; an opportunity (on the condition that an employee cannot work for more than 6 days in a 7 consecutive day period (article 113 part 3, article 114 point 4)) to agree upon a 6-day working week will be provided.

Most of other CEE countries also have a standard 8-hour working day. The maximum of 5.5 working days per week applies in Latvia, Poland; 6 working days are allowed in the Czech Republic, Bulgaria, Germany, Denmark and Belgium.

No. 6,7,8

In Lithuania workers are awarded a 50% premium for night work and overtime, while weekly holiday work earns them a 100% premium. The new Labour code will not change these provisions.[9]

As seen in the chart, a smaller percentage of hourly pay for night work (except in Latvia) or weekly holiday work (except in Romania and Poland) is awarded in other countries.

No. 9, 10,11

There are no restrictions on night work, weekly holiday work or overtime work in Lithuania. The new legislation will not change this.

Restrictions on night work apply in Estonia, Bulgaria and Belgium; restrictions on weekly holiday work apply in Belgium; restrictions on overtime work apply in Bulgaria.

No. 12

Under the effective Labour Code, workers with a different work tenure receive paid annual leave of a different duration (workers with less than 5 years of tenure get 20 working days off, workers with 10 years of tenure get 22 working days off). The provision remains the same in the new Labour Code.

In Lithuania, workers with 1 year, 5 years and 10 years of tenure receive an average 20.7 days of paid annual leave. The new Labour Code will not change this.

The World Bank has used this calculation for almost a decade. The provision to calculate the paid annual leave by working days instead of calendar days in the new Labour Code does not bring any significant change in labour regulation.

A similar duration as in Lithuania, i.e. 20 working days of paid annual leave, is provided for workers in Latvia, the Czech Republic, Romania, Bulgaria and Belgium; in other countries the duration of paid annual leave is longer.

The strictness of regulation of working hours in Lithuania analysed by the World Bank in terms of various aspects of labour relations (13 indicators) will remain the same under the new Labour Code, except for one indicator concerned with the maximum number of working days per week.

Redundancy rules

Data on redundancy covers 9 issues, namely: the length of the maximum probationary period, the allowed bases for redundancy termination, employer's obligation to notify a third party in order to terminate a single redundant worker or a group of workers as well

[9] Introduced specifications on details about premiums for overtime work: as of July 1, a provision is included that enforces 50% premiums for overtime work; 100% premiums for non-scheduled overtime work on weekly holidays or overtime work on nights, and 150% premiums for overtime on holidays (Article 144(4)). An opportunity is provided for a mutual employer-employee agreement upon work on weekly or non-weekly holidays (Article 124(2) and Article 123(2)) with additional restrictions on overtime work.

as the need for its approval, the existing laws on the obligation to reassign or retrain a redundant worker, and provisions on the priority rules for certain redundancies. Regulation that is more flexible allows companies to readjust to the changing economic conditions.

No. 13

The effective Labour Code stipulates a maximum probationary period of 3 months, the same provision remains in the new Labour Code.

Practices in other EU states vary: in Estonia the maximum probationary period is 4 months, in Bulgaria and Germany it is 6 months while the Belgium law does not provide for a maximum period at all.

No. 14

The current Labour Code allows for the termination of redundant workers. The same applies in the new Labour Code.

No. 15, 16,17,18

In terminating redundant workers, the employer is not obligated to notify a third party (e.g. the Labour Exchange) when laying-off a single worker or a group of nine workers. In such cases, the employer is not obligated to receive an approval from a third party. The same applies in the new Labour Code.

No. 19, 20

There are mandatory rules in Lithuania that enforce a practice where, before terminating a redundant worker, the employer is obligated to reassign or retrain him. Moreover, priority rules for redundancies apply (e.g. for persons with at least 10 years of tenure in the relevant workplace). The new Labour Code will not bring about significant changes in this respect[10].

The same applies in Latvia, Estonia and Germany. However, the majority of countries do not enforce the obligation to reassign or retrain a redundant worker. More countries establish priority rules for redundancies.

No. 21

There are no priority rules for the reemployment of redundant workers in Lithuania that will not change with the enforcement of the new legislation.[11]

The aforementioned rules apply in Poland and Romania. The practice is not very prominent in other countries.

Under the new Labour Code, the strictness of regulation of redundancies will remain essentially the same according to all nine indicators outlined by the World Bank.

Redundancy cost

According to the selected methodology, redundancy costs are important as they allow for an evaluation of redundancy termination costs, which cover notice period costs/time and severance pay calculated in weeks of salary. The higher the redundancy costs, the more careful the employers are about hiring new workers. The factors taken into account are the average costs of notice periods and severance pay for workers with 1 year of tenure, 5 years of tenure and 10 years of tenure. One month is considered to be 4 and 1/3 weeks.

No. 22

The current regulation stipulates that before terminating a redundant worker with 1, 5 or 10 years of tenure, the employer has to provide notice in advance of 8.7 weeks of salary. Under the new Labour Code, this period will be shortened to 4.3 weeks.[12]

Belgium has the longest notice period (19.7 weeks of salary). Denmark does not regulate this period on a

[10] Under Article 71(1) of the new Labour Code, in case there is a job vacancy which is intended for an employee working under an indefinite-term employment contract, the employer shall offer an employee performing an identical or similar job and meeting the established qualification requirements, who works under a fixed-term employment contract, to occupy this vacancy. If there are several suitable employees, the offer shall be made to the employee who has been in an employment relationship with the employer the longest In addition, under Article 59 an employment contract may be terminated at the employer's will by giving notice three working days in advance and paying a severance pay in the amount of at least six monthly average wages.

[11]The indicator evaluates whether, before offering a workplace to a wider range of candidates, the employer firstly offers it to the relevant company's previously terminated workers.

[12] For the majority of workers, the new Labour Code enforces notice periods that are twice or even four times shorter: the two-month notice period in the current Labour Code (article 130(1)) becomes a one-month. Workers with less than 1 year of tenure will have to be notified two weeks prior to the termination (Article 57(7) of the new Labour Code).

central level. In other countries, the notice period for redundancy terminations varies from 4 to 10 weeks.

No. 23

In Lithuania, after terminating a redundant worker with 1, 5 or 10 years of tenure, the employer has to pay an average worth of 15.9 weeks of salary in severance pay (workers with 1 year of tenure receive 8.7 weeks of salary, workers with 5 years of tenure receive 17.3 weeks of salary and workers with 10 years of tenure receive 21.7 weeks of salary). As of July 1, when the new Labour Code enters into force, the severance pay will be reduced[13]: the employer will have to pay an average worth of 13 weeks of salary in severance pay (workers with 1 year of tenure will receive 8.7 weeks of salary, workers with 5 years of tenure will receive 13.0 weeks of salary and workers with 10 years of tenure will receive 17.4 weeks of salary).

The highest severance pay, excluding Lithuania, is in the Czech Republic and Germany.

As may be observed, under the new Labour Code, the redundancy costs in Lithuania will be lower.

To conclude, the analysis of the regulatory changes shows that the new Labour Code will not bring flexibility to labour relations in Lithuania. There will be virtually no improvement in 30 out of 33 indicators whereas the regulatory environment will lean towards flexibility in merely three indicators.

[13] The new Labour Code enforces lower severance pay for redundancies and foresees that: the employer has to pay the average of 2 salaries worth in severance pay while workers with less than 1 year of tenure receive the average of 0.5 salaries worth in severance pay. In addition, the employer should pay the same amount in spite of the employee's long-term tenure in the relevant workplace (unless the tenure is less than 1 year), while the a) and (Article additional severance pay for long-term tenure is paid out from long-term (employment fund (Article 57(8) and Article 57(9)). In contrast to the current Labour Code (Article 140(1)), the longer the tenure, the higher the severance pay the employer has to pay. By comparing the cumulative severance pay paid out by the employer and long-term employment fund with the foreseen provisions in the current Labour Code, they become lower by one average salary of the worker. For workers with 5-10 years of tenure in the relevant workplace severance pay varies from 4 to 3 average salaries; for workers with 10-20 years of tenure in the relevant workplace from 5 to 4 average salaries and for workers with more than 20 years of tenure in the relevant workplace, from 5 to 6 average salaries.